

WDM:KMH 07/26/04 296685.doc  
PATENT

Attorney Reference Number 4239-67284-01  
Application Number 10/713,791

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Application of:** Romero et al.

**Application No.** 10/713,791

**Filed:** November 13, 2003

**Confirmation No.** 8756

**For:** METHODS AND KITS FOR  
DETERMINING RISK OF PRE-TERM  
DELIVERY

**Examiner:** Not yet assigned

**Art Unit:** 1645

**Attorney Reference No.** 4239-67284-01

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP MISSING PARTS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney  
for Applicant(s)

Kevin M. Hayes

Date Mailed July 26, 2004

MAIL STOP MISSING PARTS  
COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.47 TO ACCEPT THIS APPLICATION WHERE  
JOINT INVENTORS HAVE REFUSED TO JOIN**

Applicant Roberto Romero petitions under 37 C.F.R. § 1.47 for the referenced application to be accepted as filed on behalf of himself and Applicants Robert Christner and Irina Buhimschi, who have refused to join in this application. A check in the amount of \$130.00 is included to cover the fee set forth in 37 C.F.R. § 1.17(h). However, if the Patent Office determines that an additional fee is required for Applicants to file this Petition, please charge any such fees, or credit overpayment, to Deposit Account No. 02-4550.

As described in more detail in the Statement of Facts below, the undersigned presented the non-joining applicants with the application papers and made several requests that the papers be executed or that express refusals to join be provided. In the undersigned's last communication with the non-joining applicants the undersigned indicated that if the non-joining applicants did not return executed application papers or provide an express refusal to join by July 23, 2004, they would be considered to have refused to join this application. As neither has been

received from either Christner or Buhimschi, they should be considered to have refused to join this application.

### **STATEMENT OF FACTS**

This application arises from an inventorship dispute between Romero, whose declaration is submitted herewith, and Christner and Buhimschi, who have refused to join in this application. As indicated in the Statement Under 37 C.F.R. § 1.604(b) submitted with this application, this application was filed with claims copied from U.S. provisional application 60/426,096 (the '096 application). The '096 application named Romero, Christner, and Buhimschi as applicants, however, the undersigned was informed that Christner and Buhimschi would file a non-provisional application claiming the benefit of the '096 application excluding Romero. Accordingly, Romero filed this application naming Romero, Christner, and Buhimschi as applicants.

#### **Christner's Refusal to Join**

Romero's assignee, the National Institutes of Health, sent Christner's employer, CIPHERGEN Biosystems, Inc., a letter, dated June 9, 2004, informing CIPHERGEN that the undersigned would be sending application papers for signature by Christner and requesting that either the papers be signed and returned or that an express refusal be provided. (Exhibit 1). Subsequently, the undersigned presented Christner, through CIPHERGEN, with a copy of the application and a declaration and power of attorney by letter dated June 17, 2004. (Exhibit 2). The undersigned requested that Christner return the declaration by July 2, 2004, or that written reasons for his refusal be provided. CIPHERGEN replied by letter dated July 1, 2004, that if its

patent counsel concludes that Romero qualifies as an inventor “the proper course of action would be to name Dr. Romero on the application already filed, rather than to have the inventors execute a declaration in a new patent application.” (Exhibit 3) (copying Christner). On July 19, 2004, the undersigned contacted Ciphergen’s patent counsel, Stephen Bent, Esq., to request an express refusal to join on behalf of Christner. Bent did not provide an express refusal, but sent an email to Ciphergen, dated July 19, 2004, indicating the undersigned’s request for an express refusal. (Exhibit 4). Having received no response, the undersigned again requested an express refusal from Ciphergen by email dated July 22, 2004, which further indicated that if the undersigned did not receive a response by July 23, 2004, such non-response would be considered a refusal to execute the application papers. (Exhibit 5). As of July 26, 2004, the undersigned has not received a response from Ciphergen.

#### **Buhimschi’s Refusal to Join**

The undersigned presented Buhimschi, through her attorney, Peter E. Keith, Esq., with a copy of the application and a declaration and power of attorney by letter dated June 17, 2004. (Exhibit 6). The undersigned requested that Buhimschi return the declaration by July 2, 2004, or that written reasons for her refusal be provided. By email dated June 18, 2004, Keith indicated that he had forwarded the application papers to Buhimschi, but did not represent her on intellectual property matters. (Exhibit 7). When the undersigned contacted Ciphergen’s patent counsel, Bent, on July 19, 2004, the undersigned also inquired as to whether Bent knew if Buhimschi had counsel for intellectual property matters. Bent answered affirmatively and copied Buhimschi’s intellectual property counsel, Greg Stone, Esq., on Bent’s July 19 email indicating the undersigned’s request for express refusals from the non-joining inventors.

(Exhibit 4). Having received no response from Buhimschi, the undersigned again requested an express refusal from Buhimschi by email to Stone dated July 22, 2004. (Exhibit 5). The undersigned's July 22 email further indicated that if the undersigned did not receive a response by July 23, such non-response would be considered a refusal to execute the application papers. As of July 26, 2004, the undersigned has not received a response from Buhimschi.

#### STATEMENT OF LAST KNOWN ADDRESS

In accordance with 37 C.F.R. § 1.47(b) the last known addresses of the non-signing applicants are provided below, along with other addresses where the non-signing applicants may be able to be reached in accordance with MPEP § 409.03(e):

	Last known mailing address	Other address	Other address
Robert Christner	c/o National Foundation for Functional Brain Imaging 801 University Boulevard, Suite 200 Albuquerque, NM 87106	c/o Mr. John Storella Vice President for Intellectual Property CIPHERGEN Biosystems, Inc. 6611 Dumbarton Circle Fremont, CA 94555	c/o Stephen Bent, Esq. Foley & Lardner LLP 3000 K Street, N.W., Suite 500 Washington, DC 20007
Irina Buhimschi	c/o Yale University School of Medicine Department of Obstetrics, Gynecology & Reproductive Sciences 333 Cedar Street, LCI 804 New Haven, CT 06510	c/o Greg Stone, Esq. Whiteford, Taylor & Preston Seven Saint Paul Street Baltimore, MD 21202	c/o Peter E. Keith, Esq. Gallagher Evelius & Jones LLP 218 North Charles Street, Suite 400 Baltimore, MD 21201

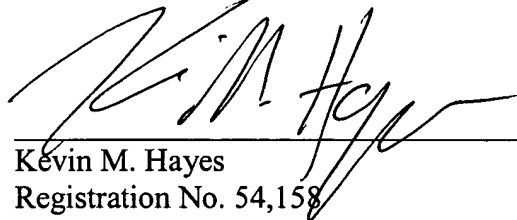
### CONCLUSION

In view of the foregoing, Romero petitions for Christner and Buhimschi to be considered to have refused to join this application. Romero further petitions that this application be accepted as filed by Romero on behalf of himself and on behalf of Christner and Buhimschi with Romero's declaration submitted herewith treated as having been signed by Romero on behalf of the non-signing applicants in accordance with MPEP § 409.03(a)(A).

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

  
Kevin M. Hayes  
Registration No. 54,158

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446



Department of Health & Human Services

Public Health Service  
National Institutes of Health

Office of Technology Transfer  
National Institutes of Health  
6011 Executive Boulevard  
Rockville, MD 20852

June 9, 2004

John Storella  
Vice President for Intellectual Property  
CIPHERGEN Biosystems, Inc.  
6611 Dumbarton Circle  
Fremont, CA 94555

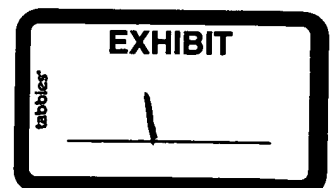
In Re: DHHS Ref. No. E-043-2003; U.S. Provisional Patent App. No. 60/426,096 filed 14 Nov. 2002 now abandoned, U.S. App. Ser. No. 10/713,791 filed 13 Nov. 2003 and Int'l Pat. App. PCT/US03/36622 filed 13 Nov. 2003, "Biomarkers for Intra-Amniotic Inflammation."

Dear John:

This correspondence is to inform you that attorneys representing the National Institutes of Health (NIH) are forwarding declarations and powers of attorney to your company for Dr. Rob Christner to sign in the pending U.S. and PCT applications mentioned above, filed by NIH, in which Ciphergen Biosystems may have an interest as a co-owner. These applications claim priority to U.S. Provisional Patent Application 60/426,096 originally filed by Ciphergen's patent counsel Foley & Lardner, which included a different inventive entity. We would appreciate it if Dr. Christner would sign these documents and return them to our patent counsel Klarquist Sparkman LLP. If he refuses to sign them, please inform our attorneys at Klarquist in writing of the reasons for the refusal.

About one year ago, we discussed the necessity of having patent counsel conduct an inventorship analysis of this invention in preparation for the subsequent filing of a non-provisional and/or international application. Mr. Stephen Bent of Foley & Lardner conducted the analysis and formulated a written opinion on October 29, 2003. The conclusion of a recent Wayne State University (WSU) academic misconduct investigation in which Dr. Buhimschi was found to have improperly excluded Dr. Romero from a manuscript concerning this invention suggests that Mr. Bent's conclusions should be revisited.

As you may recall, at the time Mr. Bent conducted his inventorship analysis, WSU convened a committee to investigate allegations of scientific misconduct against Dr. Irina Buhimschi for concealing information from NIH co-authors on a corresponding manuscript submitted to the *Lancet* and for deliberately excluding these co-authors from any further work on the project pertaining to this invention. Dr. Romero was unable to divulge certain documents to Mr. Bent that corroborated his inventorship due to delays in scheduling a formal hearing and because premature disclosure of these documents to Dr. Buhimschi may have fostered their misuse and compromised the integrity of WSU's investigation. Dr. Romero asked Mr. Bent if he was willing to take custody of these documents under a confidentiality agreement under which Mr. Bent



would be precluded from disclosing them to Dr. Buhimschi. Mr. Bent declined to take the documents under these conditions. Nevertheless, we believe that Dr. Romero provided sufficient information to Mr. Bent to substantiate his inventorship and NIH's interest in this invention and we were therefore disappointed after reading Mr. Bent's October 29, 2003 opinion in which Dr. Romero's contribution was characterized as that of a mere materials supplier. We respectfully disagree with this opinion which we suspect resulted from Mr. Bent's declining to consider certain evidence from Dr. Romero.

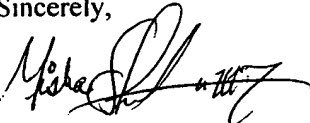
NIH retained its own patent counsel to file the above patent applications in order to protect its rights. At present, NIH believes in good faith that the proper inventive entity includes: Roberto Romero (NICHD), Irina Buhimschi (WSU) and Rob Christner (CIPHERGEN); it is not NIH's intent to divest any party of their rights in this invention.

The WSU committee investigating Dr. Buhimschi for scientific misconduct conducted a hearing on January 26, 2004 after which it concluded that Dr. Buhimschi acted improperly by failing to credit Dr. Romero's clear and substantive contributions to the subject matter of the manuscript submitted to the *Lancet* concerning this invention. The same fraud that permeated Dr. Buhimschi's failure to credit Dr. Romero's involvement in the *Lancet* manuscript certainly taints Dr. Romero's exclusion from any non-provisional patent applications claiming that subject matter, particularly when that exclusion appears to have been based primarily on evidence from Dr. Buhimschi.

In light of these events, we would like to open a dialogue with CIPHERGEN in an effort to avoid an interference proceeding and to decide how best to handle the prosecution of claims in this invention. Ultimately, we believe that the invention provides a public health benefit and should be commercialized either by an exclusive license to CIPHERGEN or to a qualified third party.

Please feel free to contact me either by email or phone.

Sincerely,



Michael A. Shmilovich, Esq.  
National Institutes of Health  
Office of Technology Transfer  
6011 Executive Blvd  
Rockville, MD 20852  
o (301) 435-5019  
f. (301) 402-0220  
shmilovm@mail.nih.gov

Cc: Anne DiSantes (Wayne State, OTT)  
Roberto Romero, M.D. (NICHD)  
Virginia DeSeau (NICHD)  
Kevin Hayes, Esq. (Klarquist Sparkman, LLP)  
William Noonan, M.D., Esq. (Klarquist Sparkman, LLP)



# KLARQUIST SPARKMAN, LLP

INTELLECTUAL PROPERTY LEGAL SERVICES • INCLUDING PATENTS, TRADEMARKS, COPYRIGHTS & LITIGATION • SINCE 1941

June 17, 2004

Mr. John Storella  
Vice President for Intellectual Property  
CIPHERGEN BIOSYSTEMS, INC.  
6611 DUMBARTON CIRCLE  
FREMONT, CA 94555

RE: U.S. Patent Application No. 10/713,791  
For METHODS AND KITS FOR DETERMINING RISK OF  
PRE-TERM DELIVERY  
Filed November 13, 2003  
From Provisional Application 60/426,096  
NIH (DHHS) Ref. No. E-043-2003/0-US-03  
Our Ref. No. 4239-67284-01

RE: PCT International Application PCT/US03/36622  
For BIOMARKERS FOR INTRA-AMNIOTIC  
INFLAMMATION  
Filed November 13, 2003  
From Provisional Application 60/426,096  
NIH (DHHS) Ref. No. E-043-2003/0-PCT-04  
Our Ref. No. 4239-67285-01

Dear Mr. Storella:

As indicated in the letter you should have recently received from Michael A. Shmilovich, Esq., of the National Institutes of Health, we filed the referenced patent applications naming Dr. Roberto Romero, Dr. Robert Christner, and Dr. Irina Buhimschi as joint inventors. To complete the filing formalities for these applications we need Dr. Christner to sign and date the enclosed combined Declaration and Power of Attorney (Declaration) for the U.S. application and the enclosed Power of Attorney for the PCT application.

Please have Dr. Christner sign these documents where indicated, in blue ink. He will need to indicate his citizenship, state of residence, and home address on these documents. If there are any errors in his information on the enclosed documents, please have him cross out the incorrect information, write in the correct information, and date and initial each change. Please return the signed copies to us by facsimile before July 2, 2004, and then mail the originals to us at your earliest convenience. If

#### Partners

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Kristin L. Cleveland  
James E. Geringer  
Michael P. Girard  
Joseph T. Jakubek  
Michael D. Jones, Ph.D.  
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Justin D. Wagner  
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Gillian L. Bunker, Ph.D.  
Anne Carlson, Ph.D.  
Susan Alpert Siegel, Ph.D.  
Travis Young, Ph.D.

#### Technical Consultants\*

Daniel H. Bell

\*Not a Member of  
the Oregon Bar



K

Mr. John Storella  
Our Ref. Nos. 4239-67284-01, 4239-67285-01  
June 17, 2004  
Page 2

Dr. Christner refuses to sign these documents, please advise us in writing of the reasons for his refusal.

As you know, the Powers of Attorney will give us the right to prosecute this application in the United States Patent and Trademark Office and under the Patent Cooperation Treaty on behalf of the inventors and the NIH (although our client is the NIH and not the individual inventors). The Declaration is a sworn statement that Dr. Christner reviewed the U.S. patent application and believes that he is a co-inventor of the claimed subject matter. We have enclosed a copy of the application for Dr. Christner's reference.

We look forward to receiving the signed documents by July 2, 2004.

Sincerely yours,

KLARQUIST SPARKMAN, LLP



Kevin M. Hayes  
kevin.hayes@klarquist.com

KMH:eb  
Enclosures

cc: Michael A. Shmilovich, J.D. (NIH)  
William D. Noonan, M.D. (Klarquist Sparkman, LLP)

July 1, 2004

Direct Dial: (510) 505-2211  
[lstorella@ciphergen.com](mailto:lstorella@ciphergen.com)

Michael A. Shmilovitch, Esq.  
National Institutes of Health  
Office of Technology Transfer  
6011 Executive Boulevard  
Rockville, Maryland 20852

Re: U.S. Application 10/713,791, filed November 13, 2003, and  
PCT Application PCT/US03/36622, filed November 13, 2003,  
PCT Application PCT/US03/36120, filed November 13, 2003  
all claiming priority from U.S. Provisional 60/426,096, filed November 14, 2002  
Our Files: 035394-001900 and -001910  
DHHS Ref. No. E-043-2003

Dear Misha:

This responds to your letter to me of June 9, regarding a patent application directed to intra-amniotic inflammation filed by Ciphergen and Wayne State naming Irina Buhimschi and Rob Christner as co-inventors. Apparently the NIH has filed its own applications on the same invention, naming Robert Romero, Irina Buhimschi and Rob Christner as co-inventors.

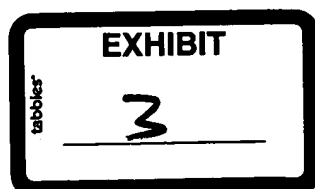
You said in your letter that you believe that in determining inventorship in the application as filed by Ciphergen and Wayne State, Steve Bent of Foley & Lardner failed to identify the proper inventors because he was not willing to consider confidential evidence from Dr. Romero. Mr. Bent informs me, however, that he did consider the materials to which you refer. That is, at a meeting with you and Dr. Romero, he reviewed the materials that you provided and made a summary of their contents. Therefore, even though he did not take custody of those materials, Mr. Bent's decision appears to be based on all the relevant evidence.

Mr. Bent cannot make an inventorship determination based on "secret" evidence. If you believe that there is some non-secret material pertaining to inventorship that Mr. Bent somehow overlooked, then by all means send the material to him for review. Also, have you identified for Mr. Bent the specific contributions to conception that you believe Dr. Romero made?

Ciphergen has no wish to exclude actual inventors from a patent application; however, at present you have given me no reason to believe that Mr. Bent erred in his inventorship determination.

In any case, should Mr. Bent conclude, after you have presented further evidence to him, that Dr. Romero is a co-inventor, then the proper course of action would be to name Dr. Romero on

Ciphergen Biosystems, Inc.  
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Tel: +1 510 505 2100  
Fax: +1 510 505 2101  
[www.ciphergen.com](http://www.ciphergen.com)



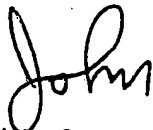
 CIPHERGEN®  
*The ProteinChip® Company*

07-08-04 11:29 AM

● Page 2

the application already filed, rather than to have the inventors execute a declaration in a new patent application.

Yours truly,

A handwritten signature in black ink, appearing to read "John", with a stylized, cursive script.

John Storella, Esq.  
Vice President for Intellectual Property

cc: Stephen Bent  
Rob Christner  
Anne Di Sante  
Joan C. Tao



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**Emmy Burns**

---

**From:** Kevin Hayes  
**Sent:** Monday, July 26, 2004 4:00 PM  
**To:** Emmy Burns  
**Subject:** FW: Declarations forwarded for signature by Rob Christner and Irina Buhimschi

---

**From:** Butler, Camille J. [mailto:CJButler@foley.com]  
**Sent:** Thursday, July 22, 2004 9:58 AM  
**To:** Kevin Hayes  
**Cc:** Bent, Stephen A.  
**Subject:** FW: Declarations forwarded for signature by Rob Christner and Irina Buhimschi

Mr. Hayes,

This is the e-mail that Steve sent to you on July 19th. Please confirm receipt.

***Camille J. Butler***

*Executive Assistant to Stephen A. Bent*

*Foley & Lardner LLP*

*3000 K Street, N.W., Suite 500*

*Washington, D.C. 20007*

*Direct (202) 295-4140*

*Fax (202) 672-5399*

*E-mail: [cjbutler@foley.com](mailto:cjbutler@foley.com)*

*visit us at [www.Foley.com](http://www.Foley.com)*

-----Original Message-----

**From:** Bent, Stephen A.  
**Sent:** Monday, July 19, 2004 6:00 PM  
**To:** 'kevin.hayes@clarquist.com'  
**Cc:** 'John Storella (jstorella@ciphergen.com)'; 'Greg Stone (gstone@wtplaw.com)'  
**Subject:** Declarations forwarded for signature by Rob Christner and Irina Buhimschi

**Dear Mr. Hayes,**

**Following up on our conversation, earlier today, I understand that you seek, for the sake of clarity, an express statement that the captioned individuals will not sign inventorship declarations in relation to two U.S. applications, which your firm filed at the request of NIH/OTT.**

**As we discussed, your contact at NIH/OTT had sent declarations to Mr. John Storella of Ciphergen (Fremont, CA), who is copied on this message. Dr. Buhimschi is represented in this context by Mr. Greg Stone of Whiteford, Taylor & Preston (Baltimore, MD), who also is copied.**

7/26/2004



**These gentlemen may be in a position to provide the express statement that you seek, perhaps even by return email, for Mr. Christner and Dr. Buhimschi, respectively.**

**Sincerely,  
Stephen Bent, leader  
Life Sciences Industry Team  
FOLEY & LARDNER  
tele: 202-672-5404  
fax: 202-672-5399**

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## Emmy Burns

---

**From:** Kevin Hayes  
**Sent:** Thursday, July 22, 2004 2:24 PM  
**To:** 'jstorella@ciphergen.com'; 'gstone@wtplaw.com'  
**Cc:** 'sbent@foley.com'; William Noonan; Emmy Burns  
**Subject:** Stephen Bent's email of July 19 RE: Declarations forwarded for signature by Rob Christner and Irina Buhimschi

Dear Sirs:

We write on behalf of our client, the National Institutes of Health, regarding U.S. and PCT applications filed for "Methods and Kits for Determining Risk of Pre-Term Delivery" naming Drs. Romero, Buhimschi, and Christner as inventors. The July 19 email you received from Stephen Bent, Esq., regarding our request for Drs. Christner and Buhimschi to provide express refusals to sign the declarations/powers of attorney that were transmitted with our June 17 letters to Ciphergen and Dr. Buhimschi (c/o Peter E. Keith, Esq.) listed my email address incorrectly (our firm's name is spelled with a "K" not a "C").

We would appreciate it if you would reply to this email address with the inventors' express refusals to sign the declarations/powers of attorney (or if you would send us the executed documents by facsimile). If we do not hear from you by Friday, we will consider such non-response to be a refusal to execute the documents.

Best regards,

Kevin Hayes

Klarquist Sparkman, LLP  
One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Tel. (503) 226-7391 x2376  
Fax (503) 228-9446  
email: kevin.hayes@klarquist.com

EXHIBIT

5

7/26/2004



# KLARQUIST SPARKMAN, LLP

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Susan Alpert Siegel, Ph.D.  
Travis Young, Ph.D.

## Technical Consultants\*

Daniel H. Bell

\*Not a Member of  
the Oregon Bar

June 17, 2004

**By E-Mail to [pkeith@gejlaw.com](mailto:pkeith@gejlaw.com)**  
**Confirmation by Mail**

Peter E. Keith, Esq.  
Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, MD 21201

RE: U.S. Patent Application No. 10/713,791  
For METHODS AND KITS FOR DETERMINING RISK OF  
PRE-TERM DELIVERY  
Filed November 13, 2003  
From Provisional Application 60/426,096  
NIH (DHHS) Ref. No. E-043-2003/0-US-03  
Our Ref. No. 4239-67284-01

RE: PCT International Application PCT/US03/36622  
For BIOMARKERS FOR INTRA-AMNIOTIC  
INFLAMMATION  
Filed November 13, 2003  
From Provisional Application 60/426,096  
NIH (DHHS) Ref. No. E-043-2003/0-PCT-04  
Our Ref. No. 4239-67285-01

Dear Mr. Keith:

We understand that you may represent Dr. Irina Buhimschi on matters related to the subject matter of the referenced patent applications. We represent the National Institutes of Health (NIH), for which we filed the referenced patent applications naming Dr. Roberto Romero (NIH), Dr. Buhimschi, and Dr. Rob Christner (CIPHERGEN) as joint inventors. You are no doubt aware that there is some controversy surrounding the inventorship of this invention. The referenced applications were filed to protect the NIH's rights in the claimed subject matter while the parties involved determine how best to proceed.

To complete the filing formalities for these applications we need Dr. Buhimschi to sign and date the enclosed combined Declaration and Power of Attorney (Declaration) for the U.S. application and the enclosed Power of Attorney for the PCT application.

# K

Peter E. Keith, Esq.  
Our Ref. Nos. 4239-67284-01, 4239-67285-01  
June 17, 2004  
Page 2

Please have Dr. Buhimschi sign these documents where indicated, in blue ink. She will need to indicate her citizenship, state of residence, and home address on these documents. If there are any errors in her information on the enclosed documents, please have her cross out the incorrect information, write in the correct information, and date and initial each change. Please return the signed copies to us by facsimile before **July 2, 2004**, and then mail the originals to us at your earliest convenience. If Dr. Buhimschi refuses to sign these documents, please advise us in writing of the reasons for her refusal. If you do not represent Dr. Buhimschi with regard to this matter, please advise us immediately so we can contact her directly.

The Powers of Attorney will give us the right to prosecute this application in the United States Patent and Trademark Office and under the Patent Cooperation Treaty on behalf of the inventors and the NIH (although our client is the NIH and not the individual inventors). The Declaration is a sworn statement that Dr. Buhimschi reviewed the U.S. patent application and believes that she is a co-inventor of the claimed subject matter. We have enclosed a copy of the application for Dr. Buhimschi's reference.

We look forward to receiving the signed documents by **July 2, 2004**.

Sincerely yours,

KLARQUIST SPARKMAN, LLP



Kevin M. Hayes  
[kevin.hayes@klarquist.com](mailto:kevin.hayes@klarquist.com)

KMH:eb

Enclosures

cc: Michael A. Shmilovich, J.D. (NIH)  
William D. Noonan, M.D. (Klarquist Sparkman, LLP)



## Emmy Burns

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**From:** Peter Keith [PKeith@GEJLAW.com]  
**Sent:** Friday, June 18, 2004 1:23 PM  
**To:** Emmy Burns; Kevin Hayes  
**Cc:** irina.buhimschi@yale.edu  
**Subject:** RE: Dr. Irini Buhimschi (Our Ref. Nos. 4239-67284-01, 4239-67285-01)

I've forwarded this to Dr. Buhimschi, but I don't represent her on IP matters. If you haven't done so, you should send this to Steve Bent at Foley Lardner, who is counsel to Ciphergen on IP matters and who would look at this on behalf of Dr. Buhimschi.

Regards,  
Peter Keith

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-----Original Message-----

**From:** Emmy Burns [mailto:emmy.burns@klarquist.com]  
**Sent:** Thursday, June 17, 2004 8:40 PM  
**To:** Peter Keith  
**Cc:** Kevin Hayes; William Noonan  
**Subject:** Dr. Irini Buhimschi (Our Ref. Nos. 4239-67284-01, 4239-67285-01)

Please see the attached letter from Kevin Hayes and accompanying patent application, drawings, Combined Declaration and Power of Attorney (U.S.) and Power of Attorney (PCT).

<<Keith ltr Scan001.PDF>> <<Patent Application Scan001.PDF>> <<Drawings Scan001.PDF>>  
<<Combined Declaration and Power of Attorney (U.S.) Scan001.PDF>> <<Power of Attorney (PCT) Scan001.PDF>>

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